Reg. No. GR/RNP/GOA/32

RNI No. GOAENG/2002/6410

Panaji, 3rd March, 2008 (Phalguna 13, 1929)

SERIES II No. 48

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

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Notification

No. 28/18/2007-LAB/944

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 6-8-2007 in reference No. IT/14/2002 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 28th August, 2007.

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IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before Dilip K. Gaikwad, Presiding Officer)

Case No. IT/14/2002

Agnelo Fernandes,
R/o 12/89, Khorlim,
Mapusa, Bardez-Goa. ... Workman/Party I

V/s

M/s. Fomento Corp.,
C/o Fomento, Behind Cine Lata,
Margao, Goa. ... Employer/Party II

Workman/Party I is represented by Adv. P. J. Kamat.

Employer/Party II is represented by Adv. G. B. Kamat.

AWARD

(Delivered on this 6th day of August, 2007)

1. This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

2. Facts of present reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under order dated 26-2-2002 has referred to this Industrial Tribunal following dispute for adjudication:-

(i) Whether the action of the management of M/s. Fomento Corporation, Margao, in terminating the services of Shri Agnelo Fernandes, Branch-in-charge w.e.f. 22-2-2001 is legal and justified ?

(ii) If not, to what relief the workman is entitled ?

2. Pursuant to notices, both parties put their appearance in this Industrial Tribunal. Party I presented its claim statement on 25-4-2002 at Exb. 5. It appears from claim statement that, the Party I was initially under employment of M/s. Auto Universal w.e.f. 6-2-1983. The Party II took over the said M/s. Auto Universal along with its all employees including Party I on 27-2-1987. The Party I was working as Branch-in-charge in establishment of the Party II at Mapusa till 20-1-1988. The Party II transferred him to its showroom at Margao. Since then the Party I worked in showroom of the Party II at Margao till 7-3-1988. The Party II terminated service of Party I w.e.f. 8-3-1988. The Party I raised Industrial Dispute which came to be referred to Industrial Tribunal for adjudication. It was the reference bearing No. IT/31/1989. The Industrial Tribunal held that the Party I is a workman as defined under Section 2(s) of the said Act, 1947 and that action of the management of the Party II in terminating his service

is legal and justified, by passing Award on 8-5-1993. The Party I challenged the Award on Writ Petition bearing No. 201/1994 in the Hon'ble High Court of Bombay at Goa. By oral judgement dated 7-7-1997, the Hon'ble High Court quashed the impugned Award and directed the Party II to reinstate the Party I in the service with all consequential benefits. The Party II filed Letters Patent Appeal of 2 of 2002 against oral judgement dated 7-7-1997 passed by; the Hon'ble High Court of Bombay at Goa. The Letters Patent Appeal came to be dismissed by Division Bench of the Hon'ble High Court on 18-1-2000. The Party II did not comply with order passed by the Hon'ble High Court in Writ Petition No. 201/94. Therefore, the Party I filed contempt petition bearing No. 13/1998 in the Writ Petition before the Hon'ble High Court. The Party II filed an application in the Hon'ble High Court stating that the Party I will be reinstated in its office at Margao. In addition, the Party II tendered oral and unconditional apology, as a result, the Hon'ble High Court pleased to dispose of contempt petition. The Party I rejoined service of the Party II at Margao on 11-7-2000. The Party II fixed wages of the Party I at Rs. 2,500/- per month at the time of reinstatement of the Party I in the service. The wages fixed at Rs. 2,500/- per month were much below than that which were being paid to the employees who were junior to the Party I and who were placed in the similar position. The Party I worked in office of the Party II till 23-2-2001. He received letter dated 22-2-2001 whereunder he was informed by the Party II that he is not attending the office w.e.f. 9-10-2000 and therefore it is presumed that he has voluntarily ceased to be in employment of the Party II from the said date that is from 9-10-2000. A demand draft Rs. 80,792.50 ps. dated 10-11-2000 in full and final settlement of his dues was with the letter. He was further informed under this letter that establishment of the Party II is closed w.e.f. 15-1-2001. In fact, establishment of the Party II is still working.

4. According to the Party I termination of his service by the Party II with retrospective effect is illegal and unjustified. Therefore, by presenting the claim statement he has prayed for reinstatement in the service with full back wages and with other consequential benefits.

5. The Party II resisted the claim statement by filing its written statement on 7-6-2002 at Exb. 6. It appears from claim statement that the Party II of which Madhusudan Timblo was proprietor is carrying on business as a dealer of Escorts to sell two wheelers manufactured by Escorts Ltd., and spare parts of the automobiles for the State of Goa. The Party I was initially employed as Branch Manager in establishment of M/s. Auto Universal at Mapusa under appointment letter dated 21-4-1983. The Party II has taken over the said M/s. Auto Universal alongwith services of all employees on the same terms and conditions which were applicable to them immediately before taking over of the said M/s. Auto Universal. The Party I worked as Branch Manager in establishment of the Party II at Mapusa till 20-1-1988. The Party II transferred the Party I to its Yamaha showroom at Margao w.e.f. 21-1-1988. The Party I worked in the showroom at Mapusa till 7-3-1988. The Party II terminated service of the Party I w.e.f. 8-3-1988 on the ground that the post of Branch--in-charge is abolished. Thereafter, the Party II raised a dispute before Assistant Labour Commissioner at Margao. Conciliation proceedings held by the Assistant Labour Commissioner ended in failure. Therefore the dispute came to be referred to the Industrial Tribunal for adjudication. By award dated 8-3-1989 the Industrial Tribunal held that the action of the Party II in terminating service of Party I w.e.f. 8-3-1989 was legal and justified. The Party I filed Writ Petition bearing No. 201/94 in the Hon'ble High Court Bombay at Goa against the award passed by the Industrial Tribunal. The Hon'ble High Court by oral judgment dated 7-7-1997 quashed and set aside the impugned award and directed the Party II to reinstate the Party I in its service with all consequential benefits. In compliance with order passed by the Hon'ble High Court the Party II reinstated the Party I in its office at Margao w.e.f. 11-7-2000. A sum of Rs. 1,23,759/- as back wages is paid under demand draft dated 16-3-2000 to the Party I.

6. Further, it appears from written statement that as per clause 10 of letter of appointment dated 21-4-1983, if service contract is not otherwise terminated, the Party II had discretion to superannuate the workman on reaching the age of 50 years. The Party I attained the age of superannuation in or about the year 1999. The Party I cannot claim any protection under provisions of the said Act, 1947 in the matter of termination of his service on crossing the age of superannuation. The Party II has paid to the Party I all legal dues under the draft dated 10-11-2000. Business of the Party II is permanently closed w.e.f. 15-1-2001. On these and above grounds, the Party II has prayed for holding that the Party I is not entitled to any of the reliefs claimed by him.

7. The Party I submitted his rejoinder on 24-6-2002 at Exb. 7. He admitted that, the Party II is running business as dealer of Escorts in sale of two wheelers manufactured by Escorts Ltd., and spare parts of automobiles for the State of Goa, that, he was working as Branch-in-charge in establishment of M/s. Auto Universal at Mapusa under appointment letter dated 21-4-1983, that the Party II took over the said M/s. Auto Universal on or about 27-2-1987 alongwith services of all employees who were working with the said M/s. Auto Universal, that, services of all the employees were taken over by the Party II without interruption and on the same terms and conditions which were applicable to them before taking over of the said M/s. Auto Universal by the Party II, that, he was working as Branch-in-charge in establishment of the Party II at Mapusa till 20-1-1988, that, the Party II transferred him to its Yamaha showroom at Margao w.e.f. 21-1-1988, that the Party II terminated his service w.e.f. 8-3-1988, that, the Party II has paid a sum of Rs. 1,23,759/- as back wages under demand draft dated 16-3-2000, and

that, as per clause 10 of letter of appointment dated 21-4-1983 superannuation age was 55 years. He further asserted that after taking over of M/s. Auto Universal, the Party II orally agreed that superannuation age of its all workmen would be 58 years. It was because of this understanding the Party II reinstated him in service on 11-7-2000. He denied all contentions which are raised by the Party II in its written statement and which are adverse to his interest.

8. On basis of pleadings of both parties the then learned Presiding Officer framed issues on 10-7-2002 at Exb. 8. The issues are as follows:

1. Whether the Party I proves that termination of his service by the Party II w.e.f. 22-2-2001 is illegal and unjustified ?
2. Whether the Party II proves that as on the date of reinstatement of the Party I on 11-7-2000, he had already attained the age of retirement/superannuation and hence there was no question of terminating his services ?
3. Whether the Party II proves that his establishment is permanently closed w.e.f. 15-1-2001 ?
4. Whether the Party I is entitled to any relief ?
5. What Award ?

9. My findings on the above issues are as follows:

Issue No. 1: Termination of service of the Party I w.e.f. 9-10-2000 is proved to be illegal and unjustified.

Issue No. 2: It is proved that the Party I attained age of superannuation well before 11-7-2000. It is not proved that because of superannuation there was no question of terminating service of Party I.

Issue No. 3: It is proved that establishment of Party II is permanently closed w.e.f. the month of October, 2001.

Issue No. 4: Entitled to back wages with full consequential benefits for period from 14-1-2001 to the month of October, 2001.

Issue No. 5: As per final order.

REASONS

10. *Issue No. 1:* Before proceeding further to decide the matter on merits it will be convenient and appropriate to have reference on admitted facts. The Party II was a proprietary concern owned by Madhusudan Timblo. It was carrying on business as a Dealer of Escorts in sale of two wheelers, manufactured by Escorts Ltd., and spare parts for the State of Goa. The Party I was initially employed as a Branch-in-charge in establishment of M/s. Auto Universal at Mapusa under appointment letter dated 21-4-1983. The Party II took over establishment of M/s. Auto Universal with all employees including the Party I on or about 27-2-1987, on the same terms and conditions which were applicable to the employees immediately before their services were taken over alongwith M/s. Auto Universal by the Party II. The Party I worked as Branch--in-charge in establishment of the Party II at Mapusa till 20-1-1988. He came to be transferred by the Party II to its Yamaha showroom at Mapusa w.e.f. 21-1-1988. The Party I worked in the Yamaha showroom at Mapusa till 7-3-1988. The Party II terminated his service w.e.f. 8-3-1988. Therefore he raised a dispute before competent authority. The dispute came to be referred to Industrial Tribunal for adjudication. It was the reference bearing No. IT/31/89. The Industrial Tribunal by passing Award on 8-5-1993 held that the Party I was a workman as defined under Section 2(s) of the said Act, 1947, and that, termination of service of the Party I by the Party II w.e.f. 8-3-1988 is legal and justified. The Party I by filing Writ Petition bearing No. 201/94 challenged second part of order passed in the Award by the Industrial Tribunal. The Hon'ble High Court allowed the Writ Petition by Judgment dated 7-7-1997 and directed the Party II to reinstate him in service with full back wages. Xerox copy of the oral judgment passed by the Hon'ble High Court is at Exb. W-3. The Party II filed Letters Patent Appeal in the Hon'ble High Court against the judgment passed in the Writ Petition. It was the Letters Patent Appeal bearing No. 2/2000. The Hon'ble High Court by order dated 18-1-2000 dismissed the Letters Patent Appeal. Xerox copy of the said order is at Exb. W-4. Inspite of order passed by the Hon'ble High Court in the Writ Petition bearing No. 201/94 the Party II did not reinstate the Party I in the service. Therefore the Party I filed contempt petition bearing No. 13/98 in the Writ Petition No. 201/94 against the Party II. In the contempt petition the Party II submitted written undertaking to reinstate the Party I in its service and tendered apology. The Hon'ble High Court considering the undertaking given and apology tendered by the Party II disposed of the contempt petition under order dated 7-7-2000. Xerox copy of the order is at Exb. W-5. The Party II rejoined his service in office of the Party II at Margao on 10-7-2000. The Party I received letter dated 22-2-2001 whereunder he was informed by the Party II that he is not attending the office from 9-10-2000 without prior permission, and therefore, it is presumed that he has voluntarily ceased to be in employment from that date. Xerox copy of this letter is at Exb. W-7.

11. The Party I has challenged the termination of his service mainly on the grounds that he worked in the office of the Party II at Margao till 14-1-2001 and therefore the Party II cannot terminate his service w.e.f. 9-10-2000, that the termination of his service as stated in the letter dated 22-2-2001 is with retrospective effect and that such termination is defective on the ground that there cannot be a retrospective termination of service.

12. Letter dated 22-2-2001 produced at Exb. W-7 makes it clear that the Party II terminated service of the

Party I w.e.f. 'that date' means w.e.f. 9-10-2000, since when according to it, the Party I was not attending its office. To put in other words termination of service of the Party I is w.e.f. 9-10-2000 and not w.e.f. 22-2-2001.

13. The Party I examined himself at Exb. 8. His evidence shows that after he came to be reinstated in service by the Party II in its office at Margao in compliance with order of the Hon'ble High Court Bombay at Goa in Writ Petition No. 201/94, he worked in the said office till 13-2-2001, and that, when he went to office of the Party II on 14-1-2001, the Party II did not allow him to join his duty by saying that the establishment of the Party II is closed. The Party II as rightly pointed out by learned advocate of the Party I did not lead evidence in rebuttal. There is no evidence on behalf of the Party II to hold that the Party I, as stated in the letter dated 22-2-2001 (Exb. W-7), did not attend its office w.e.f. 9-10-2000. The Party II being establishment of business as pointed out by learned advocate of the Party I in his argument must have maintained muster roll of its employees. In my view the Party II was in better position to produce such evidence to make the position clear. The best evidence which was possible to be produced is not produced by the Party II. Adverse inference will have to be drawn against it. I hold that evidence of the Party I will have to be accepted. Once it is accepted that the Party II worked in office of the Party II till 13-1-2001, stand taken by the Party II that the Party I did not attend its office w.e.f. 9-10-2000 must fall to the ground.

14. Next contention which is pressed into service by learned advocate of the Party I is that the Party II by letter dated 22-2-2001 terminated service of the Party I w.e.f. 9-10-2000. It is the termination of service with retrospective effect. Such termination is defective and therefore according to him it will have to be held that, termination of service of the Party I by the Party II is illegal and unjustified. To substantiate his argument he relied upon decision given by Hon'ble High Court of Judicature at Bombay in case of *Secretary, Chowke Panchkiroshi Shikshan Prasarak Mandal, Petitioner v/s Dilip A. Narvekar and others, Respondents, reported in 1992 II CLR 672.* In this reported case first respondent was Assistant Teacher in Petitioner School. He was arrested on charge of murder on 10-2-1990. Petitioner terminated his service on 19-2-1990 w.e.f. 10-2-1990. The Hon'ble High Court held that the order of termination dated 19-2-1990 is defective on the ground that there cannot be a retrospective termination of service. This decision given by Hon'ble High Court is squarely applicable to the present case.

15. To counter argument advanced by learned advocate of Party I learned advocate of the Party II argued that as per clause 10 of appointment letter dated 21-4-1983 superannuation age of all the employees of the Party II was 55 years. The Party I attained age of superannuation in or about the year 1999. The Party I stands retired on attaining the age of superannuation. After retirement the Party I does not come within definition of workman. Therefore, in his opinion, the Party I is not entitled to challenge termination of his service. In this context he relied upon decision given by the Hon'ble Supreme Court in case of *Binoy Kumar Chatterji and Jugantar Ltd., and others, reported in 1983 (46) FLR 449* and by the Hon'ble High Court of Calcutta in case of *Standard Chartered Grindlays Bank Retired Employees Association and others v/s Union of India and others, reported in 2007 Lab I. C. 1134.*

16. In case of *Binoy Kumar Chatterji* the petitioner was re-employed after attaining the age of superannuation that is to say the age of 60 years. The age of superannuation was laid down in standing orders of the establishment. The Hon'ble Supreme Court considered effect of such re-employment and held that:

> *"the age of superannuation marks the end of point of the workman's service. If he is employed afresh thereafter for a term, such employment cannot be regarded as employment contemplated within the definition of the expression "retrenchment". We are of the view that the termination of the petitioner's service on the expiry of the period of his contract on December 1, 1976, does not fall within the expression "retrenchment" in Section 2(oo) of the Industrial Disputes, Act."*

17. Catch-words of decision given by the Hon'ble High Court of Calcutta in case of *Standard Chartered Grindlays Bank Retired Employees Association and others,* are as follows:

> *"Industrial Disputes Act (14 of 1947), Ss. 2(k), (s), (p)-Industrial Dispute' – A retired employee cannot be included in definition of workman – Can neither raise nor be a party to industrial dispute within purview of I. D. Act."*

18. The Party I unequivocally admitted in his cross examination that there was a clause in his appointment letter dated 21-4-1983 that, age of his superannuation would be 55 years. Services of all employees including the Party I who were working in establishment of M/s. Auto Universal are taken over by the Party II on the same terms and conditions which were applicable to them when they were working with the said M/s. Auto Universal. This fact is apparent from reading para No. 5 of written statement of (Exb. 6) filed by the Party II and para No. 4 from rejoinder (Exb. 7) submitted by the Party I. Though the Party I disclosed in his cross examination that the Party II agreed for superannuation at the age of 58 years, there is no independent corroboration to it. I, therefore, hold that superannuation age of Party I was 55 years as stated in his appointment letter.

19. The Party I, as pointed out by him in his cross examination, born on 3-6-1944, he completed 55 years on 2-6-1999. It follows that when he was reinstated on 11-7-2000 by the Party II in the service in compliance with order of the Hon'ble High Court and which was passed in the Writ Petition bearing No. 201/94, had already completed the age of superannuation as pointed out by learned advocate of the Party II.

20. Though the Party I had already completed the age of superannuation at the time of termination of his service also, it should be remembered that on attaining age of superannuation the Party II did not make the Party I to stand retired from the service. Learned advocate of the Party II did not place before me anything to show that as soon as the employee attains the age of superannuation, such employee automatically stands retired from the service. I, therefore hold that, even though the Party I attained the age of superannuation at the time of termination of his service it will not be correct to hold that he automatically stood retired from the service. I do not agree with the arguments advanced by learned advocate of the Party II.

21. There is neither retirement of the Party I from service nor he is given appointment afresh after his attaining the age of superannuation by the Party II. This fact is clearly distinguishable from that of the reported cases of *Binoy Kumar Chatterjee* and of Standard *Chartered Grindlays Bank Retired Employees Association and others* referred to above. With respect I am of the opinion that decisions from these reported cases and which are relied upon by learned advocate of the Party II are not applicable to the present case.

22. The Party II terminated services of the Party I under letter dated 22-2-2001 (Exb. 7) only on the ground that the Party I did not attend its office w.e.f. 9-10-2000 and not on the ground that the Party I attained age of superannuation. In view of this peculiar fact I hold that the Party II is not entitled to raise plea that the Party I has already attained age of superannuation and therefore the Party I is not entitled to challenge termination of his service. I do not agree with argument advanced by learned advocate of the Party II. Relying upon decision given by *the Hon'ble High Court of Judicature at Bombay reported in 1992 II CLR 672* referred to above, I hold that termination of service of the Party I and which is with retrospective effect is defective, and therefore, such termination is illegal and unjustified. I agree with argument advanced by learned advocate of the Party I.

23. To remain absent without prior permission of employer amounts to misconduct. Even for the sake of argument assuming that the Party I remained absent from his duty as alleged by the Party I, the absence is without prior permission of the Party II. Before termination of service the Party II did not conduct departmental inquiry against the Party I in respect of his unauthorized absence from duty. On this count also, in my view, termination of service of the Party I will have to be held as illegal and unjustified. My answer to the issue is in affirmative.

24. *Issue No. 2:* Birth date of the Party I as pointed out by him in his cross examination is 3-6-1944. This fact leads to irresistible conclusion that he had attained age of superannuation that is to say the age of 55 years well before the date of his reinstatement in the service that is the date 11-7-2000.

25. So far question of terminating of service of the Party I on the ground of his attaining age of superannuation is concerned, as per clause 10 stated in his appointment letter dated 21-4-1983, the Party II had a discretion to terminate his service on this ground. There is nothing on record to show that such a discretion is used by the Party II against the Party I. There is neither evidence on behalf of the Party II nor learned advocate appearing on its behalf placed on record to prove that on attaining age of superannuation the Party I automatically stood retired from the service. In absence of specific evidence in this regard, it will not be safe and correct to conclude that on attaining the age of superannuation there was no question of terminating service of the Party I. I, therefore, answer the issue accordingly.

26. *Issue No. 3:* The Party I specifically pleaded in para No. 18 of its written statement (Exb. 6) that, its business is permanently closed w.e.f. 15-1-2001. The plea is specifically denied by the Party I in its rejoinder (Exb. 7). Under this circumstance it was necessary for the Party II to lead evidence in support of its plea. Nothing such has been done by the Party II. In absence of evidence, the plea which is in the written statement and that too when it is specifically denied, cannot be accepted.

27. The Party I admitted on page No. 3 of his cross examination that establishment of the Party II is closed from the month of October, 2001. I, therefore, hold that establishment of the Party II is closed from the month of October, 2001 and not w.e.f. 15-1-2001.

28. *Issue No. 4:* The Party I succeeded in proving that, termination of his service w.e.f. 9-10-2000 is illegal and unjustified. Section 11A of the said Act, 1947 empowers the Labour Court, Tribunal or National Tribunal to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it think fit or gives such other relief to the workman including the Award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require if it is satisfied that the order of discharge or dismissal was not justified.

29. In the present case, I am satisfied that termination of service of the Party I is not legal and justified. Establishment of the Party II is closed and as such it is not expedient and proper to order reinstatement of the Party I in service of the Party II. I, therefore, hold that he is not entitled to reinstatement in the service. To meet ends of justice, I further hold that it will be appropriate if back wages with full consequential benefits for period from 14-1-2001 till the month of October, 2001 are awarded to the Party I.

As a result of findings given to the issues No. 1 and 4, I proceed to adjudicate the reference by passing order as follows:

ORDER

1. The action of the management of M/s. Fomento Corporation, Margao, in terminating the services of Shri Agnelo Fernandes, Branch-in-charge, w.e.f. 9-10-2000 is not legal and justified ?

2. Termination of service of the Party I by the Party II w.e.f. 9-10-2000, set aside.

3. The Party I is entitled from the Party II to back wages with full consequential benefits for period from 14-1-2001 to month of October, 2001.

4. The Party II do pay to the Party I back wages with full consequential benefits for the period from 14-1-2001 to month of October, 2001.

5. No order as to costs.

6. The award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
(Dilip K. Gaikwad),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.

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Notification

No. 28/18/2007-LAB/838

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 9-6-2007 in reference No. IT/28/2000 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 22nd August, 2007.

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IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before Dilip K. Gaikwad, Presiding Officer)

Case No. IT/28/2000

Anthony Goes alias Antonio Goes,
H. No. 428, 4th Ward,
Colva, Salcete, Goa. ... Workman/Party I

V/s

The Chairman and Managing Directors,
Goa Tourism Development Corporation,
Trionora Apartment,
Dr. Alvares Costa Road,
Panaji, Goa. ... Employer/Party II

Workman/Party - I Represented by Adv. A. Fernandes.

Employer/Party - II Represented by Adv. P. J. Kamat.

AWARD

(Passed on this 9th day of July, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the said Act, 1947").

1. Facts giving rise to the present reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under order dated 8-3-2000 has referred to this Tribunal following dispute for adjudication:-

"(1) Whether the action of M/s. Goa Tourism Development Corporation Limited, Panaji, Goa, in terminating the services of Shri Anthony Goes, Room boy, working at Tourist Hostel, Colva, with effect from 31-7-1993, is legal and justified ?

(2) If not, to what relief the workman is entitled ?"

2. On receipt of the reference notices were issued to both parties. In response to notices, both parties put their appearance in this Tribunal. The Party I filed his claim statement on 9-5-2000 at Exb. 4. It appears from the claim statement that he was appointed on daily wages as a room boy in tourist cottages situated at Colva and which are owned by the Party II, with effect from the month of December, 1983. He came to be appointed as room boy in the said tourist cottages on temporary basis w.e.f. 1-3-1986. He was discharging his duties honestly and sincerely. The Party II treated him as permanent employee by its letter 2-5-1986. The Party II by giving one month's notice dated 30-6-1993 terminated his service w.e.f. 31-7-1993 without show cause notice and without following principles of natural justice. The termination of his service is illegal, unwarranted and unjustified. He filed appeal against termination of his service, before Appellate Authority on 8-9-1993. The appeal is dismissed. He sent letters on 3-3-1998, 28-6-1998, 1-9-1998, 3-11-1998, 16-11-1998 and on 11-1-1999 and notice through his advocate on 1-5-1999 and thereby called upon the Party II to reinstate him in service. The Party II did not comply with his request. He is claiming to be workman under provisions of the said Act, 1947. He raised dispute before the appropriate authority. The dispute could not be settled as a result the Government of Goa under its order dated 8-3-2000 referred the dispute to this Tribunal for adjudication as stated earlier.

3. The Party I by filing the claim statement has prayed for directions to the Party II to reinstate him in service with full back wages and with other consequential benefits.

4. The a Party II resisted statement of claim by filing its written statement on 26-8-2000 at Exb. 6. Averments

from written statement go to show that the Party II is a Corporation registered under the Indian Company's Act, 1956. The Party II owns various resorts and holiday--homes in the State of Goa to cater needs of tourist. Various activities of the Party II are carried out through its regular as well as temporary employees. Central Civil Services Rules are applicable to the regular employees, while Central Civil Services (Temporary Services) Rules, 1965 are applicable to temporary employees. The Party I was in service as room boy on temporary basis. Termination of his service is as per Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965. He is not governed by provisions of the Industrial Disputes Act, 1947. Termination of his service is legal and proper. He is not entitled to reinstatement service, back wages and also to consequential benefits.

5. The Party I presented his rejoinder on 4-8-2000 at Exb. 9. He denied all contentions which are raised by the Party II in its written statement and which are adverse to him. He further averred that the Party II is dealing with tourism activities. The Party II is an industry within the meaning of provisions contained in the said Act, 1947. He has reiterated that he is entitled to the reliefs as claimed in the claim statement.

6. On basis of pleading of both parties, the then Presiding Officer framed issues on 14-9-2000 at Exb. 10. The issues are recast by me on 14-6-2007 at Exb. 20. The recast issues are as follows:

(1) Whether the Party I was permanently employed as a room boy by the Party II ?

(2) Whether the reference is maintainable ?

(3) Whether the termination of service of Party I by the Party II w.e.f. 31-7-1993 is legal and justified ?

(4) Whether the Party I is entitled to reliefs as prayed for ?

(5) What Award ?

7. My findings on the above issues are as follows:

Issue No. 1: In negative.
Issue No. 2: In negative.
Issue No. 3: In affirmative.
Issue No. 4: In negative.
Issue No. 5: As per final order.

REASONS

8. *Issue No. 1:* The Party I examined himself at Exb. 13. It appears from his evidence that, initially he was appointed as room boy w.e.f. 24-12-1983. He is made permanent in the service as "room boy" in the year 1986.

9. In support of his case the Party I further examined a witness by name Maximian Fernandes at Exb. 15. This witness was working as a Receptionist in tourist resort owned by the Party II and which is situated at Colva. He supported that the Party I was permanent employee as "Room boy" in the said tourist resort.

10. The Party II filed Affidavit of its Deputy General Manager (Administration) at Exb. 16 in evidence. In addition, his oral evidence is alongwith the affidavit. It appears from the affidavit that the Party II was appointed as a "Room boy" w.e.f. 12-3-1986 on purely temporary basis in the tourist resort situated at Colva. In his oral evidence, he has produced xerox copy of the minutes of the meeting held on 9-10-1982 by the Board of the Party II. Xerox copy of the resolution is produced to show that the Party II has adopted Central Civil Services Rules for its staff members including officials. The relevant resolution is bearing No. 19 on page No. 23 of the minutes of the meeting.

11. It appears from evidence led by the Party I as well as by the Party II that the Party I is claiming that he was permanent in the service as a "Room boy" while according to the Party II appointment of the Party I as room boy was purely on temporary basis. Since the Party I came before the court, burden lies on him to prove that he was permanent in the service as a room boy. Though there is no documentary evidence in the form of appointment order, it is not in dispute that he was appointed on daily wages as room boy in the tourist resort owned by the Party II and which is situated at Colva. The appointment order produced at Exb. W-1 and which is dated 1-3-1986 shows that the Party I was appointed as room boy w.e.f. 1-3-1986 subject to terms and conditions of service appended hereto i.e. to the appointment order. The said terms and conditions of service are not produced on record.

12. Letter dated 2-5-1986 produced at Exb. W-2 is used by the Party I and also by his learned advocate during course of his argument to prove that the Party I was made permanent in service as room boy. Opening sentence of this letter is "you have been appointed/ /regularized as room boy in this Organization". The Party I under this letter is informed that he did not furnish documents: (1) Birth Certificate (2) Educational Qualification Certificate and (3) Other Certificates, if any. The Party I is requested to submit the said certificates. It is further made clear in this letter that if he failed to produce the said certificates his salary will be withheld for want of these certificates.

13. One of the two words "appointed/regularized" is not struck, as a result, the Party I got opportunity to claim that his service as a room boy is regularized under the said letter dated 2-5-1986. Even for the sake of argument assuming that the service of the Party I is regularized as room boy, there is neither on record nor learned advocate of the Party I tried to show that the regularization amounts in making the employee permanent in the service.

14. Xerox copy of letter produced at Exb. W-4 speaks that, contribution amounting to Rs. 466/- for the period from 1984-85 to 1986-87 will be deducted from salary of the Party I in nine equal installments, each of Rs. 50/- and the last installment, will be Rs. 16/-. Deductions of the contribution was w.e.f. February, 1988. Learned advocate appearing on behalf of the Party I argued that

if the Party I was not permanent in service, there was no reason to deduct contribution towards Employees' Provident Fund from salary of the Party I. The fact that the contribution for Employees' Provident Fund is deducted from salary of the Party I, according to him, establishes that the Party I was permanent in service as room boy.

15. Xerox copy of circular dated 6-3-1986 produced at Exb. W-5 lays down that every employee who has put in 60 days of service is eligible to the Employees' Provident Fund and therefore it is proposed to start the deductions from the salary/wages from the month of March, 1986 payable in April, 1986 of such employees. It is needless to reproduce more details from this circular. It is no where mentioned in the circular that deduction towards Employees' Provident Fund should be from salary of the employee who is permanent in the service. Section 26 of the Employees' Provident Fund Scheme, 1952, as rightly pointed out by learned advocate of Party II, makes it clear that if the employee has completed three month's continuous service and who has actually worked for not less than 60 days within a period of three months or less in that factory or other establishment, such employee is entitled to become member of the fund. Therefore, only because contribution towards Employees' Provident Fund was deducted from the salary/wages of the Party I that will not be a ground to conclude, that he was permanent in service as room boy.

16. The Party II has prepared tentative seniority list of its room attendants/room-cleaners/peons/gardeners/ /chawkidars/boat attendants/live guards/tailors/house--keepers-in-charge and of junior engineers. Xerox copy of circular dated 20-11-1989 whereunder the seniority list is circulated and also xerox copy of the seniority list are at Exb. W-10, colly. Name of the Party I is at Sr. No. 99 in the seniority list. The employees who are at Sr. Nos. 1 to 59 and at Sr. Nos. 133 to 135 in the seniority list are absorbed in their respective services with effect from the dates mentioned against their names. The employees who are at Sr. No. 60 to Sr. No. 132 are not absorbed in service. This fact leads to logical conclusion that they are not permanent employees.

17. The documentary evidence which is in the form of appointment order dated 1-3-1986 (Exb. W-1), the letter dated 2-5-1986 (Exb. W-2) and xerox copy of letter dated 20-1-1988 (Exb. W-4) whereunder contribution from salary of the employee towards Employees' Provident Fund for the period from 1984-85 to 1986-87 was to be deducted do not lead to conclusion that the Party I was permanent employee in the service of the Party II. It follows that there is no documentary evidence on behalf of the Party I to support his claim. On the contrary, the documentary evidence which is in the shape of seniority list reveals that he was not permanent in the service. I, therefore, do not accept case made out by Party I, and also argument advanced by his learned advocate. My answer to the issue is in negative.

18. *Issue No. 2:* Learned advocate of Party I argued that the Party I is a workman, and the Party II is an industry as defined under provisions of the said Act, 1947. The dispute raised by the Party I is in respect of employment or non-employment, which is Industrial Dispute. Therefore, according to him, the reference which is under Section 10(1)(d) of the said Act, 1947 by the Government of Goa is maintainable. In support of his argument he relied upon decision given by the Hon'ble Supreme Court in case of *Nityanand Joshi and others, Appellants v/s Life Insurance Corporation of India and others, Respondents, reported in 1969 (2) SCC 199.* In this reported case applications were filed by the employees against the respondents for computing in terms of money the benefit of holidays and for recovering the amount. There was no award or settlement under which the benefit of holidays had already been computed. The Hon'ble Supreme Court held that, this case squarely falls within sub-section (2) of Section 33(c) of the said Act, 1947. The Hon'ble Supreme Court further held in this case that the scheme of the Indian Limitation Act, 1963, deals with application to courts and that the Labour Court is not a court within meaning of the Indian Limitation Act, 1963.

19. Facts of the reported case referred to above are totally different from that of the present one, especially in light of grounds on which maintainability of the reference is challenged by the Party II. Therefore with respect I hold that, decision from this reported case and which is relied upon by learned advocate of Party I is not applicable to the present case.

20. To counter argument advanced by learned advocate of the Party I, learned advocate of Party II argued that Central Civil Services Rules are applicable to regular employees, while Central Civil Services (Temporary Service) Rules, 1965 are applicable to temporary employees of the Party II. He pointed out that the Central Civil Services (Temporary Service) Rules, 1965 are applicable to the Party I. The dispute is raised by the Party I after four years from disposal of appeal which was presented by the Party I against termination of his service before the Appellate Authority. There is inordinate delay in raising the dispute. Therefore, in his opinion, the reference is not maintainable. He relied upon decision given by the full Bench of the Hon'ble High Court of Kerala, in case of *Director of Postal Services (South) Kerala and another, Appellants v/s K.R.B. Kaimal (FB) another, Respondents, reported in 1984 LAB IC 628.*

21. In above reported case petitioners were employed as temporary clerks in the Postal Telegraph Department. Their services were terminated by the postal authority. Orders of termination came to be set aside by the Hon'ble High Court. They were accordingly reinstated but the department allowed their claim for salary only for three years preceding the date of the High Court order. The Petitioners claimed salary for the entire period they were out of service, and moved the Central Government Labour Court under Section 33C(2) of the said Act, 1947 for determination of the monetary

benefits due to them. The department took a preliminary objection that the petitioners were not workmen employed in any industry and therefore the Labour Court has no jurisdiction. The Hon'ble High Court of Kerala held that:-

> *"rights and liabilities of the temporary Government servants in the P and T Department are to be found in Central Civil Services (Temporary Services) Rules, 1965 as framed under Article 309 of the Constitution. The court cannot thus ignore the rules, nor efface them from the statute book simply because there is the Industrial Disputes Act. Chapter V-A of the Industrial Disputes Act can be pressed into service only in these cases where these special rules relating to temporary Government servants cannot apply. Thus the special rules under Art. 309 in respect of the temporary employees in the P & T Department exclude the provisions in Chapter V-A, Industrial Disputes Act. The implied exclusion of these provisions of the Industrial Disputes Act can be gathered also from the maxim "generalia specialibus non derogant".*

22. One more decision relied upon by learned advocate of Party II is from case of *Shalimar Works Ltd., and their workmen, reported in 1950-83 SC LJ Vol. 7, page 154.* In this reported case reference was made after more than 4 years after old workmen were discharged. The Hon'ble Supreme Court held that—

> *"there is no doubt that strictly speaking the order of the company discharging its workmen when a dispute was pending was a breach of Section 33 of the Act. The remedy for such a breach is provided in Section 33-A and it can be availed of even by an individual workman. It is true that there is no limitation prescribed for reference of disputes to an Industrial Tribunal even so it is only reasonable that disputes should be referred as soon as possible after they have arisen and after conciliation proceeding have failed, particularly so when the disputes relate to discharge of workmen wholesale."*

The Hon'ble Supreme Court further held in the above reported case that—

> *"in the instate case the dispute was not referred for adjudication within reasonable time. It was referred more than four years after the old workmen were discharged. In the circumstances the relief of reinstatement had to be refused to the discharged workman for the purpose of dislocation of the industry. The defect, if any in the order of discharge, due to the permission not having been obtained under Section 33 can in the circumstances of the case be ignored on the ground that the workmen were not interested in reinstatement.*

23. The "workmen" as defined under Section 2(s) of the said Act, 1947, means:

> *"any person (including the apprentice) employed in any industry to do any manual, unskilled, skilled technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute.*

Industry as defined under Section 2(j) of the said Act, 1947, means:

> *"any business, trade, undertaking manufacture or calling of employers and includes any calling service, employment, handicraft or industrial occupation or avocation of workman."*

Industrial dispute as defined by Section 2(k) of the said Act, 1947, means:

> *"any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons".*

24. The Party I was employed as room boy in tourist resort owned by the Party II at Colva. Considering nature of his employment it can safely be held that he was employed to do manual and/or unskilled work for hire or reward. Therefore, he was workmen within the meaning of Section 2(s) of the said Act, 1947.

25. The Party II is a Corporation registered under the Indian Companys' Act, 1956. It owns various resorts and holiday-homes for catering needs of tourist. The Party II is carrying on business by way of running resorts and holiday-homes to meet needs of tourist. Therefore the Party II is an "industry" defined by Section 2(j) of the said Act, 1947. It is admitted fact that the Party I was employee while the Party II was employer. The dispute by the Party I with the Party II is in respect of his employment or non-employment. It is the industrial dispute as defined by Section 2(d) of the said Act, 1947. I agree with arguments advanced by learned advocate of the Party I that the Party I is workman, the Party II is an industry and that there is industrial dispute between the parties.

26. The Board of Directors of the Party II by passing Resolution No. 19 in its meeting held on 9-10-1982 adopted Central Civil Services Rules for its staff members and officers. This is apparent from minutes of the meeting of which xerox copy is produced at Exb. E-5. Resolution No. 19 is on page No. 23 of the minutes of the meeting. The Party I was temporary in service as room boy. If this fact coupled with the Resolution No. 19 is taken into consideration, it will have to be held that the Party I is governed by the Central Civil Services (Temporary Service) Rules, 1965 as pointed out by learned advocate of the Party II.

27. Termination order dated 30-6-1993 of which xerox copy is produced at Exb. W-6 speaks that—

> *"In pursuance of sub-rule 5 of the Central Civil Services (Temporary Services) Rules, 1965, I, Shri R. P. Pal, Managing Director hereby give notice to Shri Antonio Goes, Room boy that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be, tendered to him".*

28. Learned advocate of Party I argued that there is no sub-rule 5 in the Central Civil Services (Temporary Services) Rules, 1965. Therefore, according to him, it cannot be said that, action taken by the Party II against Party I is under provisions of the said Rules, 1965. It is true that there is no sub-rule 5 as pointed out by learned advocate. The word "Sub" is mentioned before word "Rule" in the said order by mistake. This has been pointed out by learned advocate of the Party II during course of argument. Since Central Civil Services Rules are made applicable by the Party II to its all employees, and since the Party I was temporary in service, it will have to be held that termination order issued against the Party I is under Rule 5 of the said Rules, 1965. I, therefore, hold that the argument advance by learned advocate of the Party I must fail. Relying upon decisions given by the Hon'ble High Court of Kerala in case of *Director of Postal Services (South) Kerala Circle, Trivandrum and another, Appellants v/s K.R.B. Kaimal and another, Respondents, reported in 1984 LAB IC 628,* I hold that the special rules which are in the shape of Central Civil Services (Temporary Services) Rules, 1965 and which were applicable to the Party I will exclude provisions of Chapter V-A of the Industrial Disputes Act, 1947. The implied exclusion of these provisions of the Industrial Disputes Act, 1947, will disentitle the Party I from raising dispute under provisions of the said Act, 1947.

29. The appeal which was preferred on 8-9-1993 by the Party I to the Chairman and Appellate Authority of the Party II against termination of his service is decided on 28-1-1994. Xerox copy of the order is at Exb. W-7. The Party I raised dispute before the appropriate authority in the year 2000. There is considerable delay of near-about six years in raising the dispute. No satisfactory explanation is forth-coming by the Party I as to why there is such inordinate delay. In view of this reason and relying upon decisions given by the Hon'ble High Court of Kerala in case of *Director of Postal Services (South) Kerala Circle, Trivandrum and another, Appellants v/s K.R.B. Kaimal and another, Respondents, reported in 1984 Lab I C 628,* and by the Hon'ble Supreme Court in case of *Shalimar Workers Ltd., reported in 1950 83 SCLJ, Vol. 7 page 154,* I hold that the reference is not maintainable. My answer to the issue is in negative.

30. *Issue No. 3:* The Party II terminated services of the Party I w.e.f. 31-7-1993 by termination order dated 30-6-1993. His service is terminated by giving one month's notice. It has come in evidence of the Party I that the Party II did not conduct inquiry against him before termination of his service. On this ground his learned advocate argued that action of the Party II in terminating service of the Party I is illegal and unjustified. He further pointed out that, while terminating service of the Party I provisions contained in Section 25F of the said Act, 1947 are not complied with by the Party II. This is one more ground on which he claimed that the termination of service of the Party I by the Party II is illegal and unjustified. He relied upon decisions given by the Hon'ble Supreme Court in case of *Kanhailal, Appellants v/s District Judge and others, Respondents reported in AIR 1983 SC 351,* in case of *Anil Kumar and others, Appellants v/s State of Bihar and others, Respondents, reported in (1996) 7 SCC 83* and in case of *Nar Singh Pal, Appellant v/s Union of India and others, Respondents, reported in 2002 (2) Supreme 667.* Catch-words of decision given by the Hon'ble Supreme Court in case of *Kanhailal Appellant v/s District Judge and others Respondents, are as follows-*

> *"Constitution of India, Article 311(2)*
> *Protection under — Available even to temporary servant — No penal order could be passed against him without complying with the requirements of the article — Termination of service for negligence without complying Article 311 (2) held was void."*

31. In case of *Anil Kumar Gupta and others,* services of daily wage employees working in Water and Land Management Institute of Irrigation Department of Government of Bihar were terminated on the ground of completion of the construction work allegedly for which the said employees had been engaged. There was documentary evidence showing that the employees were employed in the regular work of the institute and posted on the construction work. The Hon'ble High Court held that the termination is bad, and that, the employee would be treated to be in employment in the same position.

32. In case of *Nar Singh Pal* who was the appellant and who was dismissed was engaged as casual labour in 1982 by the Telecom Department at Agra. He worked continuously as such for more than ten years and had also acquired 'temporary' status. He was prosecuted for an offence under Sections 324, 427 and 504 IPC. The trial dragged on for many years and ultimately by judgment and order dated 27-2-1998 passed by the Chief Judicial Magistrate, Agra, he was acquitted, but in the meantime, by order dated 20-5-1992, his services were terminated against which he made a representation to the General Manager, Telecom Department, G.M.T. Office, Lucknow on 21-7-1992 but the representation was not heeded to and, therefore, the appellant filed a petition before the Central Administrative Tribunal, Principal Bench, New Delhi which was dismissed. The appellant challenged the order of the Tribunal in the Writ Petition which is also dismissed. The order of termination passed against him was ex facie, was punitive in nature. The Hon'ble Supreme Court held that—

"once an employee attains the 'temporary' status, he becomes entitle to certain benefits one of which is that he becomes entitled to the constitutional protection envisaged by Article 311 of the Constitution and other Articles dealing with services under the Union of India."

ii) Order of termination of service on the basis of preliminary enquiry and not on the basis of regular departmental enquiry without issuing a charge-sheet or giving an opportunity of hearing to the appellant, cannot be sustained.

33. Facts of the case of *Anil Kumar Gupta and others* are totally different from that of the present one. I, therefore, with respect hold that decision from this reported case is not helpful to learned advocate of the Party I to prove that, termination of service of Party I by the Party II is illegal and unjustified. The Party I had attained 'temporary' status in his service as room boy. If it is found that the order of termination of his service is ex-facie punitive in nature then and then only decisions given by the Hon'ble Supreme Court in case of *Kanhailal reported in AIR 1983 (SC) 351,* and in case of *Nar Singh Pal reported in 2002 (2) Supreme 667* will come to rescue of the Party I.

34. Learned advocate appearing on behalf of the Party II in reply argued that service of the Party I is terminated under Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965 without stigma by giving one month's notice to the Party I. Provisions contained in Section 25F of the said Act, 1947 are not applicable to the case of termination of service of the Party I. Therefore, according to him, termination of service of the Party I is legal and justified. He relied upon decision given by Hon'ble Supreme Court in case of *Union of India and others, Appellants v/s Bihari Lal Sidhana, Respondents, reported in 1997 II CLR 13* and in case of *Hemanshu Kumar Vidyarthi & ors., Petitioners v/s State of Bihar & ors., Respondents reported in 1997 II CLR 15.*

35. In case of *Union of India and others,* respondent was working as a Cash Clerk in Delhi Milk Scheme. He committed temporary misappropriation of the funds on more than one occasion. He was prosecuted for offence of misappropriation of public money. He was placed under suspension. His service was terminated under Rule 5(1) of the said Rules, 1965 during pendency of the trial as he was temporary employee. On his acquittal in the criminal case he claimed reinstatement but his Writ Petition came to be dismissed. Appeal filed by him was allowed on the ground that termination was with stigma. The Hon'ble Supreme Court in the appeal which was by special leave set aside impugned order after observing that there was no stigma attached to termination order and that the termination was legal.

36. In case of *Hemanshu Kumar Vidyarthi & ors.,* Petitioners v/s State of Bihar & ors., Respondent. Petitioner No. 1 was appointed as Assistant, Petitioner No. 2 has driver and Petitioner Nos. 3 to 5 as Peons on different dates. They were appointed in the Co-operative Training Institute, Deoghar by its Principal. They were daily wages employees. Their services came to be terminated by the Principal. Calling that termination in question, they filed a Writ Petition in the High Court. The main grievance of the petitioners before the Hon'ble Supreme Court was that the termination of their service is in violation of Section 25F of the Industrial Disputes Act, 1947. The question which was for consideration of the Hon'ble Supreme Court was whether the petitioners can be said to have been retrenched within the meaning of Section 25F of the said Act, 1947. The Hon'ble Supreme Court held that the petitioners are temporary daily wage employees, that, they were not appointed to the posts in accordance with the rules and as such their disengagement from service cannot be construed to be retrenchment nor can the same be arbitrary.

37. In the present case there is nothing in evidence to show that the appointment of the Party I to the post of room boy was not in accordance with the rules. To this extent facts of reported case of *Himanshu Kumar Vidhyarthi and Ors.,* are different from that of the present one.

38. There is xerox copy of memorandum containing offer of temporary appointment to the Party I and which is dated 3-2-1986 at Exb. E-1. Production of certificates of degree, diploma, educational and other technical qualification, certificate of age, certificate in the prescribed forms in support of candidates claiming to be of Scheduled Caste or Tribe, Anglo-Indian community, discharge certificates in the prescribed form of previous employment, if any, and of any other documents to be specified was one of the terms of appointment. By letter dated 2-5-1986 (Exb. W-2) which is already referred above the Party I was called upon to produce birth certificate, educational qualification certificate and other certificates, if any. It is no where case of the Party I that he complied with this letter dated 2-5-1986. If order of termination dated 30-6-1993 (Exb. W-6) is read as it is, it becomes crystal clear from this order that it is the order of simple termination without attaching any stigma. Order of termination is not punitive in nature.

39. Rule 5(1) of the said Rules, 1965 whereunder service of the Party I is terminated lays down that:

"(a) the services of temporary Government Servant who is not in quasi permanent service shall be liable to termination at any time by the notice in writing given either by the Government Servant to the appointing authority or by the appointing authority to the Government servant;

(b) The period of such notice shall be one month."

The Party I who was temporary servant was not in quasi permanent service. His service is terminated by the appointed authority by giving one month's notice. The termination is clearly as per provisions contained in Rule 5(1) of the said Rules, 1965 and the same is without attaching stigma. These facts are clearly distinguishable from that of the cases of *Kanayalal* reported in AIR 1983 SC 351 and of *Nar Singh Pal* reported in 2000(2) Supreme 667. Decision from these two reported cases are not applicable to the present case.

40. Rule 5(1) of the said Rules, 1965 does not provide that before termination of service of such Government Servant either preliminary or regular departmental inquiry should be held against him. Since termination of service of the Party I is as per provisions contained in Rule 5(1) of the Rules, 1965, without attaching stigma, neither preliminary inquiry nor departmental inquiry by issuing charge-sheet or by giving an opportunity of hearing, is necessary.

41. Now coming to submissions made by learned advocate of the Party I that provisions of Section 25F of the Industrial Disputes Act, 1947, are not complied with by the Party II while terminating services of the Party I, and therefore termination of service of the Party I is illegal and unjustified, it becomes necessary to have reference of the said provisions. Section 25F lays down that—

> "No workman in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—
>
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of the notice;
>
> (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
>
> (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]"

The above provisions lay down conditions precedent to retrenchment of workman. The conditions are not complied with by that Party II while terminating service of the Party I. The termination of service of the Party I as already stated is under provisions of Rule 5(1) of the said Rules, 1965. Therefore in my opinion Section 25F of the said Act, 1947, as rightly pointed out by learned advocate of the Party II, is not applicable to the present case. Question of compliance with conditions precedent to retrenchment of workman and which are laid down by the Section 25F of the said Act, 1947 does not arise. Since termination of service of the Party I is as per provisions contained under Section 5(1) of the said Rules, 1965 without attaching stigma, relying upon decision given by the Hon'ble Supreme Court is case of *Union of India and others* reported in *1997 II CLR 13* of which facts are identical to that of the present one, I hold that the termination of service of the Party I by the Party II is legal and justified. I, therefore, answer the issue in affirmative.

42. *Issue No. 4:* The Party I has prayed for direction to the Party II to reinstate him in service as a room boy with full back wages and with consequential benefits. It is proved that termination of his service by the Party II is legal and justified. Therefore, he is not entitled to reinstatement in the service. So far his remaining prayer for full back wages with consequential benefits is concerned, learned advocate of Party II submitted that there is no automatic entitlement to back wages, in case if it is held that the termination of service of the Party I is not legal and justified. He relied upon decision given by the Hon'ble Supreme Court in case of *Divisional Controller GSRTC, Appellant v/s Kadarbhai J. Suthar, Respondents* reported in *2007 II CLR 83.* In this reported case the respondent driver was dismissed from service due to rash and negligent driving of bus. He was acquitted by the Magistrate in criminal case. The Labour Court held impugned order of dismissal as illegal and awarded reinstatement in service without back wages. Writ Petition filed by the respondent driver seeking back wages was allowed. Letters Patent Appeal filed by management was partially allowed whereunder back wages came to be refused to the extent of 75%. Therefore the appellant filed appeal before the Hon'ble Supreme Court. It is held by the Hon'ble Supreme Court that there is no automatic entitlement to back wages on termination being held not lawful and that on facts denial of back wages by Labour Court, justified.

43. Question of awarding back wages with consequential benefits arises only after termination of service of employee is proved to be illegal or unjustified. In the present case termination of service of the Party I is proved to be legal and justified and therefore he is neither entitled to reinstatement as stated earlier nor to back wages with consequential benefits. My answer to the issue is in negative.

As a result of findings given to the issue Nos. 3 and 4, I proceed to adjudicate the reference by passing order as follows:

ORDER

(1) The action of M/s. Goa Tourism Development Corporation, Limited, Panaji, Goa in terminating the services of Shri Anthony Goes working at Tourist Hostel, Colva, w.e.f. 31-7-1993 is legal and justified ?

(2) The workman/Party I is not entitled to any of the reliefs claimed by him.

(3) No order as to costs.

(4) The Award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
(Dilip K. Gaikwad),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.

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